**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 2528 of 2001**
**With**
**FIRST APPEAL No. 2529 of 2001**
**With**
**FIRST APPEAL No. 681 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.S.SHAH**
**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**JASHWANTBHAI PUNISINH BARAIYA - Appellant(s)**
**Versus**
**IBRAHIMBHAI SADIKBHAI MAULAVI & 2 - Defendant(s)**

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**Appearance :**
MR SANDIP C SHAH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
MR HM BHAGAT for Defendant(s) : 3,
MR SUNIL PARIKH for respondent No.6 in FA Nos.2529/01 & 681/06.

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**CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**

**and**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 05/02/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. These three appeals arise out of a common judgment and three separate awards dated 26th June 2000 rendered by the Motor Accident Claims Tribunal, Nadiad in MACP Nos.266 to 268 of 1991.

2. On 7th April 1990, when all the claimants were travelling in a matador going from Surat to Ahmedabad, their vehicle met with an accident near Mogar village on the National Highway. The matador dashed against an incoming truck bearing registration No.GRN-5230 and all the three occupants of the matador received injuries of different seriousness.

3. MACP No.268 of 1991 came to be filed by Shri Jaswantbhai Punisinh Baraiya, driver of the matador who claimed a compensation of Rs.2 lacs from driver, owner and Insurance Company of the offending truck. Similarly, MACP No.266 of 1991 came to be filed by Shri Balaji Shetanji Baraiya who was travelling in the matador as a labourer claiming compensation of Rs.50,000/- for the injuries he received in the accident. MACP No.267 of 1991 came to be filed by Kiritsinh Parmar who was also travelling in the matador as a cleaner seeking compensation of Rs.50,000/- for the injuries received by him in the accident.

4. The Tribunal came to the conclusion that the accident had occurred on account of equal negligence on part of both the drivers i.e. driver of the truck as well as driver of the matador.

5. With respect to the quantum of compensation, the Tribunal computed compensation of Rs.96,400/- in MACP No.268 of 1991 (related to First Appeal No.2528 of 2001). The Tribunal, however, considering 50 per cent negligence on the part of the claimant himself, awarded only half of the sum by way of compensation to him. It was the case of the claimant therein that he had received multiple fractures and had also received permanent partial disability.

6. With respect to MACP No.266 of 1991 relating to First Appeal No.2529 of 2001, the Tribunal awarded a sum of Rs.20,360/- to the claimant.

7. In the third claim petition being Claim Petition No.267 of 1991, the Tribunal awarded a compensation of Rs.29,000/- to the claimant.

8. In all cases Tribunal directed that the compensation will be recovered with 12% interest.

9. Before us, learned advocate Shri Sandip C.Shah for the appellants, original claimants, submitted that the Tribunal gravely erred in coming to the conclusion that driver of the matador was

negligent to the extent of 50 per cent in causing the accident. By referring to the evidence on record in the form of oral depositions of the witnesses as well as the panchnama of scene of the accident, he submitted that the driver of the matador was not negligent at all. He submitted that especially when driver of the truck did not enter the witness box to challenge the version of the claimants, the Tribunal ought to have come to the conclusion that the accident occurred due to the sole negligence of the driver of the truck.

10. With respect to computation of compensation also, he submitted that the Tribunal awarded compensation which was inadequate. He submitted that in all the three claim petitions, the claimants succeeded in establishing that the claimants had received permanent partial disability. He submitted that the Tribunal erred in computing the income of the claimants on the lower side and also did not properly consider the nature of disability suffered by the claimants. In short, he submitted that the appeals are required to be allowed in toto.

11. Learned advocate Shri Sunil Parikh appearing for the National Insurance Company Limited – insurer of the matador - in First Appeal Nos.2529 of 2001 and 681 of 2006, though supported the appellants regarding the assessment of negligence of the two drivers, opposed the first appeals with respect to quantum of compensation.

12. Having heard the learned advocates appearing for the parties, we find considerable substance in the submission of learned advocate Shri Sandip Shah for the appellants that the Tribunal was not justified in equally apportioning the responsibility of causing the accident on both drivers. It may be noted that all the three claimants who were themselves eye-witnesses had entered witness box and stated before the Tribunal that on the date of the accident, the truck was being driven at a high speed and dashed against the matador. Additionally, from the panchnama of scene of the accident also, it can be seen that after causing the impact, the truck had swerved to the extreme left side of the road and dashed against a tree. The matador was found on its correct side of the road. The driver of the truck did not enter the witness box to disprove the averments of the claimants. In that view of the matter, the Tribunal erred in assessing 50 per cent negligence on both the drivers. There is, however, one aspect of the matter which cannot be completely lost sight of. The driver of the matador, i.e. claimant Jaswantbhai Baraiya, in his cross-examination before the Tribunal had stated that the vehicles were being driven on a straight road when the accident took place. He also admitted that he noticed the oncoming truck only about 10 feet away before it dashed against his vehicle. It has also come on record that the accident took place at about 4 'O clock in the afternoon. Thus there was ample

day light when the vehicles dashed against each other. Considering all these aspects of the matter, driver of the matador also cannot totally escape the responsibility of the accident. In our view, therefore, the correct assessment of respective negligence would be 80 : 20 of driver of the truck and driver of the matador.

13. Coming to the question of quantum of compensation, we find that in MACP No.268 of 1991, the Tribunal assessed the monthly income of the claimant i.e. driver of the matador at Rs.1200/-. The Tribunal also assessed the functional disability at 25 per cent and computed the loss of future income on the basis of Rs.3600/- per annum. The Tribunal adopted multiplier of 15 for the claimant aged 24 years and computed future loss of income at Rs.54,000/-. In addition thereto, the Tribunal added an amount of Rs.2400/- as actual loss of income for two months, Rs.15,000/- towards pain, shock and suffering, Rs.15,000/- towards medical expenses for the treatment undergone, Rs.10,000/- towards attendant charges, special diet, etc. The total computation of the amount, therefore, came to Rs.96,400/- which was reduced to half on account of the conclusion of the Tribunal that the claimant himself was negligent to the extent of 50 per cent in causing the accident.

14. It had come on record before the Tribunal that the claimant was employed as a driver in a

matador. He had stated that in addition to receiving a monthly salary of Rs.1200/-, he was also paid allowance of Rs.1000/- per month. We, therefore, find that the total monthly income of the claimant should be accepted at Rs.2200/-. Learned advocate Shri Sandip Shah has correctly pointed out that the doctor in his evidence had opined that the claimant had received permanent disability to the extent of 29 per cent of the body as a whole. It may be noted that the claimant had suffered three fractures and had to undergo three operations. There was shortening of the leg. Doctor had opined that the disability would cause inconvenience in the claimant driving a vehicle and his driving of the vehicle would be hazardous. Considering all these aspects of the matter, assessment of the doctor of permanent disability of 29 per cent should have been accepted by the Tribunal. Future loss of income of the claimant would, therefore, be worked out Rs.1,37,808 (29 per cent of Rs.2200/- = Rs.638 i.e. Rs.7656 per annum). Considering the age of the claimant at 24 years, multiplier of 18 would be justified. The claimant would, therefore, receive Rs.7656 x 18 = Rs.1,37,808/- towards future loss of earning.

It has also come on record that the claimant had to receive extensive medical treatment and this had resulted into extended period of forced inactivity. His actual loss of salary, therefore, can be considered for a period of six months i.e. Rs.2200 x 6 = Rs.13,200/-.

From the material on record, it can be seen that the claimant had received three fractures and had to undergo three operations. Even after extensive treatment, the wounds had not fully healed and there was puss formation in his bones. At the time of the accident, he was a young man of 24 years. We, therefore, find that appropriately he can be awarded a sum of Rs.30,000/- under the head of pain, shock and suffering and loss of amenities of life.

The Tribunal awarded only a sum of Rs.10,000/- under the head of attendant charges, special diet and transportation. Considering that the claimant had to receive extensive medical treatment which included long spells of indoor treatment and also thereafter follow-up treatment periodically, a sum of Rs.30,000/- towards the combined head of attendant charges, special diet and transportation would be justified in the facts of the case.

Considering evidence on record, the Tribunal awarded Rs.15,000/- for medical expenses and treatment. We see no reason to modify this figure. It may be recalled that the claimant had undergone three operations.

In the result, the computation of the claim in First Appeal No.2528 of 2001 would be worked as follows:

| | | |
|---|---|---|
| 1. | Rs.137,800 | towards future loss of income |
| 2. | Rs. 13,200 | towards actual loss of income |
| 3. | Rs. 30,000 | towards pain, shock & suffering |
| 4. | Rs. 30,000 | towards attendant charges, special diet, transportation, etc. |
| 5. | Rs.15,000 | medical expenses and treatment |
| | Rs.2,26,000/- | Total compensation |

Since we found that the claimant as driver of the matador was himself negligent to the extent of 20 per cent in causing the accident, the compensation would have to be reduced by 20 per cent of the above sum i.e. the claimant would be entitled to Rs.1,80,800/- (Rs.2,26,000 – Rs.45,200).

15. The appellant in First Appeal No.2528 of 2001 would, therefore receive, an additional amount of Rs.1,32,600 (Rs.1,80,800 – Rs.48,200 already awarded by the Tribunal) with proportionate costs. Though the Tribunal granted higher rate of interest, the additional compensation being awarded under this appeal will carry interest at the rate of 9 per cent per annum from the date of claim petition till realization. The appeal is partially allowed in the above terms.

16. With regard to First Appeal No.2529 of 2001, it may be noted that the appellant-claimant was employed as a labourer in the matador. His monthly income was, therefore, assessed at Rs.800 per

month. The functional disability of the claimant was be assessed at 5 per cent of the body as a whole. Under the different heads, therefore, the Tribunal granted the following compensation :

1. Rs.5760 for loss of future income
2. Rs.1600 for actual loss of income
3. Rs.5000 for pain, shock and suffering
4. Rs.5000 for medical expenses
5. Rs.3000 for attending charages, special diet and transportation

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Rs. Rs.20,360/-

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17. We find some substance in the submission of learned advocate Shri Sandip Shah for the appellant that the Tribunal granted compensation on the lower side. The income of the appellant could have been adopted at Rs.1000/- per month and with passage of time, the same could have at least increased to Rs.1200 per month and on such basis, his loss of income can be worked out. The doctor had assessed the disability of the appellant-claimant at 10 per cent. The claimant should, therefore, receive compensation for the loss of income at Rs.120 per month i.e. Rs.1,440/- per annum. Considering the age of the claimant, multiplier of 15 could be appropriately adopted. Compensation under the head of future loss of income would therefore come to Rs.21,600/- (Rs.1440 x 15).

Since the claimant was unable to discharge his normal duties for three months, loss of actual income would be Rs.3600. Considering that he had received serious injuries, the claim under the head of pain, shock and suffering and amenities of life can be Rs.10,000/-. The award of Rs.5,000/- under the head of medical expenses calls for no interference. Considering the spell of hospitalization, etc., compensation for attendant charges, special diet and transportation can be enhanced to Rs.6,000/-.

The appellant claimant in First Appeal No.2529 of 2001 is therefore, entitled to the following amounts:

1. Rs.21600 for loss of future income
2. Rs. 3600 for actual loss of income
3. Rs.10000 for pain, shock and suffering
4. Rs. 5000 for medical expenses
5. Rs. 6000 for attending charges, special diet and transportation

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Rs. Rs.46,200/-

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The appellant-claimant would, therefore, receive an additional amount of Rs.25,840/- to be recovered from the opponents with 9 per cent interest from the date of claim petition till realization with proportionate costs.

18. As regards First Appeal No.681 of 2006, it may be noted that the claimant was aged 22 years on the date of the accident and was employed as a cleaner. The Tribunal awarded a sum of Rs.29,000/- under different heads. We find that the same requires to be enhanced. Considering the nature of evidence, income of the claimant could have been believed at Rs.1,000/- per month. Same would have gone up with passage of time considering the fact that the claimant was a young man on the date of the accident. His loss of income income, therefore, should be worked out on the basis of prospective notional income of Rs.1500/- per month. The claimant had himself agreed the computation of compensation on the basis of 10 per cent disability. He would, therefore, be compensated at Rs.150 per month i.e. Rs.1800 per annum. Considering the age of the claimant being 22 years at the time of accident, multiplier of 18 would be justified. The loss of future income could, therefore, be worked out to Rs.32400 (Rs.1800 x 18). Considering the nature of injuries, his actual loss of income could be worked out to Rs.1,600/-. The award for pain, shock and suffering granted by the Tribunal is not disturbed. So also the award of Rs.3,000/- for attendant charges, special diet, transportation, etc. is left unaltered. The Tribunal further awarded Rs.5000/- for medical treatment which is also not disturbed.

In the result, the appellant-claimant in First

Appeal No.681 of 2006 would be entitled to receive the following amounts:

| | | |
|---|---|---|
| 1. | Rs.32,400 | for loss of future income |
| 2. | Rs. 1,600 | for actual loss of income |
| 3. | Rs. 5,000 | for pain, shock and suffering |
| 4. | Rs. 3,000 | for attending charages, special diet and transportation |
| 5. | Rs. 5,000 | for medical treatment. |
| Rs. | Rs.47,000/- | Total compensation |

The appellant-claimant would, therefore, receive an additional amount of Rs.18,000/- under this appeal to be recovered from the opponents with 9 per cent interest from the date of claim petition till realization with proportionate costs.

19. Learned advocate Shri Sunil Parikh for the National Insurance Co. Ltd. submitted that the said Insurance Company had deposited 50 per cent of the award amounts in each of the claim petitions considering the judgment and awards rendered by the Tribunal. Now that this Court is reducing the liability of the said Insurance Company in two first appeals to 20 per cent instead of 50 per cent, the amounts deposited in excess of its liability, if any, should be refunded to it. We uphold the request of the learned advocate. After reassessment of the respective liabilities of the Insurance Company to satisfy the awards in the ratio of 80 : 20 in First Appeal Nos.2529 of 2001 and 681 of 2006, if it is

found that the National Insurance Company has deposited any amount in excess of its liability, the same shall be refunded to by the Claims Tribunal, of course, requiring the other Insurance Company, namely, United India Insurance Company to satisfy its liability under the modified awards.

20. With the above directions, the appeals are partially allowed and disposed of accordingly.

21. The Insurance Companies shall deposit the additional amounts before the Claims Tribunal within a period of two months from the date of receipt of a copy of this judgment.

22. Upon deposit of the amounts as aforesaid, as far as First Appeal No.2828 of 2001 (Claim Petition No.268 of 1991) is concerned, the Tribunal shall invest 50% of the amount in fixed deposits with a nationalized bank near the residence of the claimant for a period of three years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimant to withdraw interest periodically accruing on the fixed deposit and a direction to the bank not to permit the bank account of the claimant to be operated by any power of attorney holder other than a close relative of the claimant. The balance amount shall be disbursed to the claimant by account payee cheque after proper verification and after informing him about the

amounts being invested and disbursed and the terms and conditions of investment.

(M.S.Shah, J.)

(Akil Kureshi, J.)

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